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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Petition of the Department)
of Public Utility Control to)
Retain Regulatory Control of)
the Rates of Wholesale) FCC File No. 94-SP4
Cellular Service Providers In)
Connecticut)

COMMENTS

The undersigned, Connecticut Telephone and Communication Systems, Inc. and Connecticut Mobilecom, Inc., each Connecticut corporations having an address at 1271 South Broad Street, Wallingford, Connecticut 06492 (collectively referred to as "Connecticut Telephone"), respectfully submit the following Comments in support of the Petition of the Connecticut Department of Public Utility Control (the "Department") to Retain Regulatory Control in the State of Connecticut (filed August 9, 1994) (the "Petition").

Connecticut Telephone is the largest independent reseller of cellular service in the State of Connecticut and was a party to the Department's investigatory proceeding, Conn. DPUC

Docket 94-03-27 (the "Proceeding") which led to the Department's decision to file the Petition.

Connecticut Telephone urges the Federal Communications Commission (the "Commission") to approve the Department's Petition, because, as the offered evidence and the record of the Proceeding convincingly demonstrate, market conditions within Connecticut are not operating to protect subscribers. While proponents of deregulation stress that the Congress enacted a new policy which seeks regulatory parity and increased competition through regulatory forbearance, the Federal Omnibus Reconciliation Act of 1993, Pub. L. No. 103-66, Tit. Vi, 107 Stat. 312 (1993) ("Budget Act"), expressly acknowledges and provides for the continued exercise of state regulatory authority over commercial mobile radio services if market conditions fail to protect subscribers adequately from unjust rates or rates that are unreasonably discriminatory. Connecticut's own new legislation, P.A. 94-83, See also, Conn. Gen. Stat. § 16-250b, is very similar in its thrust, but like its federal counterpart recognizes that for a period continued regulation may be appropriate pending the development of more competitive market conditions.

Opposing parties (namely the cellular carriers) took the position before the DPUC that the Commission would apply a very burdensome standard of proof, because the Commission articulated in its Overview that states must clear "substantial hurdles." In the Matter of Implementation of sections 3(n) and 332 of the Communications Act-Regulatory Treatment of Mobile Services, 9 FCC Rcd. 1141, ¶ 23 (Feb. 1994) ("Mobile Service Order"). However, Section 332 (c)(3)(B) of the Communications Act, 47 USC ¶ 332 (c)(3)(B) merely provides that petitioning states must make a "showing" that market conditions are not adequate. There is no imposition of, or directive to the Commission to impose, any heightened standard of proof. Implicitly, the Budget Act contemplates that the states are the triers of fact and their judgment regarding local market conditions should stand, absent a finding by the Commission that a state's decision is unreasonable in light of the evidence. Consistent with the Budget Act, the Commission actually imposed a simple "burden of proof" standard in the substantive portion of the order. Mobile Service Order at ¶ 251 ("Any state . . . shall have the burden of proof that the state has met the statutory basis ([for continuing regulation])").

In the case of the Petition, the Department conducted an extremely thorough and lengthy investigation into market conditions in Connecticut. The Department's decision to petition the Commission is a considered and well reasoned determination based on a record containing overwhelming evidence of inadequate market conditions. The Proceeding was conducted as a contested case. There were seven (7) days of hearings and nearly 1,800 pages of oral testimony, including lengthy testimony from expert witnesses, cross examinations of all witnesses and rebuttal testimony. See Proceedings Transcripts. In addition, thousands of pages of written testimony and documentary evidence were produced. The most compelling proof regarding the thoroughness of the investigation came from Springwich Cellular Limited Partnership, when its counsel lauded the Department despite its conclusions:

"I feel the parties were given lots of opportunities to present a complete record to the Department for consideration. I've practiced in probably 35 state regulatory commissions, and rarely have seen so much time and dedication taken to present full evidence in a time frame like this. Thank you."

Proceeding Tr. at 1780 (8/5/94).

Simply put, the Department's decision is not arbitrary, capricious or otherwise based on unfounded notions about the marketplace. On the contrary, the Department's decision is an informed determination based on an extensive record.

More importantly, the Petition passes muster under any standard which could be reasonably imposed by the Commission. The Petition presents clear and convincing proof that market conditions in Connecticut are not adequate to protect consumers. Although there is no requirement that a state meet all of the Commission's criteria as enumerated at Mobile Service Order, ¶ 252 (under which states were given discretion to determine what evidence they believe is probative), the Petition, nonetheless, contains numerous findings consistent with such criteria. See Mobile Service Order at ¶ 252. Without reciting the Department's Decision, we particularly note that the record is replete with specific instances of anti-competitive conduct and unfair trade practices on the part of licensed cellular carriers and their retail arms, including market tampering, price fixing, upside-down pricing, (wholesale price above resale price), improper tying, unfair billing practices, use of information acquired by wholesaler from independent resellers for the resale affiliate of the carrier; preferential pricing and practices to benefit the

resale affiliate of the carrier, improper use of credit facilities and tariff violations. The record also shows that price competition between Springwich Cellular Limited Partnership and the Metro Mobile companies has been minimal, and that their level of pricing and rate of return is of sufficient concern to warrant a full investigation by the Department. In fact, the only meaningful reductions in wholesale prices occurred in the context of ongoing regulatory proceedings regarding deregulation. As an independent reseller, Connecticut Telephone has experienced many of the unfair practices undertaken by the carriers.

In sum, total, the Proceeding shed light on a market with numerous defects and the inability of the market to correct itself due to a lack of sufficient competitive pressures. The Connecticut marketplace requires continued regulatory oversight, until there is a sufficient level of competition to adequately protect consumers. Connecticut consumers should not be placed at risk for the sake of achieving the uniform implementation of a new CMRS policy.

Moreover, the Commission, in reviewing the Department's Petition, should also take into consideration that the Petition is designed to ultimately embrace the Commission's policy of deregulation and regulatory parity. The Department is not

seeking unlimited regulatory authority. Rather, it is seeking to retain its authority for a measured period of time in order to protect consumers until additional competition arrives. In this regard, the Department specifically stated that " . . . our retention of rate regulation should not be permanent, but of sufficient duration to allow for entry of other CMRS providers in the Connecticut marketplace." Petition at 5. With this in mind, the Department skillfully structured the Petition to achieve these ends. In particular, we note that the Petition contains the following:

- 1) A request to retain its authority until July 1 , 1996 (the "Initial Period");
- 2) A Departmental review of CMRS market conditions at the close of Initial Period; and
- 3) The right to extend its authority until October 1, 1997, if the Department determines that the CMRS market is not competitive.

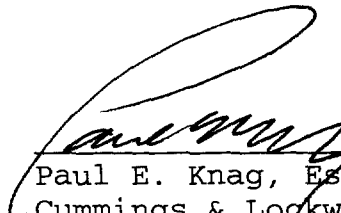
In principle, the Department seeks to do nothing more than to implement the Commission's policy, but on a time frame

which, in light of the evidence, is appropriate for the Connecticut marketplace.

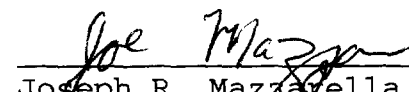
For these reasons, Connecticut Telephone supports the Department's Petition, and respectfully urges the Commission to approve the same.

Respectfully Submitted,

Connecticut Telephone and
Communication Systems, Inc.,
and Connecticut Mobilecom, Inc.



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